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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re application of

Applicant: Danforth *et al.*

Title: Production Of An Immunovariant Strain of *Eimeria Maxima* Contributes to Strain Cross-Protection with Other *Eimeria Maximas*

Group Art Unit: 1645
Examiner: Ja-Na A. Hines

Serial No.: 09/838,382

Docket No.: 0100.00

Filed: April 20, 2001

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In response to restriction under 35 U.S.C. § 121, Group I is provisionally elected with traverse. The restriction requirement is submitted to be improper because the Examiner has incorrectly described the invention and clarification is necessary. Further, it is respectfully pointed out that, according to MPEP 803, in order for a restriction requirement to be proper, two criteria must be met: (1) the inventions must be independent or distinct as claimed, and (2) there must be a serious burden on the examiner if restriction is not required.

In the instant application, Claims 1 and 2 recite an immunovariant strain of *Eimeria maxima*. Claim 1 recites an immunovariant strain designated *Eimeria maxima*-I and Claim 2 recites an immunovariant strain of *Eimeria maxima* that corresponds in characteristics to the strain *E. maxima*-I. The Examiner has correctly placed them in the same group, Group I. However, in the restriction requirement, the Examiner incorrectly states that "Claims 1-2 are drawn to an immunovariant strain **of *Eimeria maxima*-I**" (Paper No. 5, Page 2, Lines 3-4). Stated correctly, the restriction requirement should read "Claims 1-2 are drawn to an immunovariant strain of ***Eimeria maxima***". There are incorrect statements throughout the restriction requirement. For example, the Examiner also has incorrectly described and grouped the claims of Groups II and III when the Examiner states, "Claims 3, 5, 7-8, and 10 are drawn to a vaccine ... comprising a concentration of **oocysts of *E. maxima*-I**" (Paper No. 5, Page 2, Lines 5-7) and "Claims 4, 6,-7, 9, and 11 are drawn to a vaccine ... comprising a concentration of **oocysts of an immunovariant strain *E. maxima*-I**" (Paper No. 5, Page 2, Lines 8-10). In fact, it is respectfully pointed out to the Examiner that, in English, "**oocysts of *E. maxima*-I**" and **oocysts of an immunovariant strain *E. maxima*-I**" actually refer to the same thing, *i.e.*, oocysts of the same strain. Likewise, further into the restriction requirement, the Examiner states that "[W]hile Group II and Group III are drawn to vaccines, **Group III requires the use of oocysts from an immunovariant strain, whereas Group II does not**; thus the groups comprise different components, thereby resulting in different effects and capable of separate use. Each group has a different structure, requires different components, produces different effects and is capable of different functions as compared to the other group. Therefore, the products of the inventions are distinct as claimed" (Paper No. 5, Page 3, Lines 3-8). Actually, both groups, Group II and Group III, require the use of oocysts from an immunovariant strain; therefore, Claims 3, 5, 7, 8, and 10 should not be separated from Claims 4, 6, 7, 9 and 11.

The vaccine of Claims 3-11 should be included with the immunovariant strain of Group I

because Claims 3-11 merely recite a vaccine comprising the immunovariant strain of Group I and the method of using the vaccine. In addition, it is believed that immunovariant strains of Claims 1 and 2 should be examined along with the method claims, Claims 12-13, of Group IV wherein the method of obtaining an immunovariant strain is recited. Therefore, there would be no serious burden on the Examiner to search Claims 3-11 since a search attesting that the immunovariant strains of Group I were novel would also point to the vaccine of Groups II and III and the method of obtaining an immunovariant strain of Group IV being novel.

In view of the foregoing, the applicant respectfully requests that the Examiner clarify the incorrect statements of the restriction requirement. The applicant further respectfully requests that the Examiner reconsider the restriction requirement and examine Claims 1-13 together as Group I.

The restriction requirement was mailed on June 11, 2002, and this response is submitted within the one month period for reply, therefore no extension of time is required and no fee is due.

Respectfully submitted,

July 11, 2002
Date

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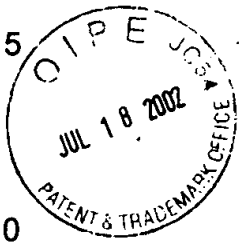

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231, on July 11, 2002
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Robin McCormick
(Name of applicant, assignee, or Registered Representative)

Robin McCormick 7/11/02
(Signature) (Date)